

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA  
FOR THE SEPTEMBER 28, 2016 STATUS CONFERENCE AND DISCOVERY  
HEARING**

The Plaintiffs' Steering Committee ("PSC") proposes the following agenda for the September 28, 2016, status conference (before Judge Boal and Judge Zobel at 11:30 a.m.). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING  
THE STATUS CONFERENCE**

1. Motion Request for Written Approval From The Court to Access And Rely on Information in the PSC Repository to Defend Himself Against Criminal Charges Arising Out of the Same Facts at Issue in this MDL by Barry J Cadden [Dkt. No. 3079]
  - a. Response to Motion re 3079 filed by United States of America [Dkt. No. 3082]
  - b. Opposition re 3079 Motion filed by Lead Counsel [Dkt. No. 3088]
  - c. Reply to Response to 3079 filed by Barry J Cadden [Dkt. No. 3092]

**B. REPORT TO THE COURT**

1. Status of bankruptcy
  - a. Status of payments from Tort Trust

- i. Status Report from Lead Counsel re Status of the Agreement Between the Tort Trustee and the Centers for Medicare and Medicaid Services [Dkt. 3068]
2. Status of insurance declaratory judgment actions
  - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.) (pending before the Tennessee Supreme Court re questions)
3. Status of discovery
4. Status of litigation track
  - a. Corrected Proposed Suggestion at Remand [Dkt. 3052]
    - i. JPML Notice of Remand Order [Dkt. 3084]
    - ii. Response by Advanced Pain & Anesthesia Consultants, BKC Pain Specialists and Cincinnati Pain Management Consultants, Inc., [Dkt. 3054]
    - iii. Letter/request (non-motion) [Dkt. 3052] from Counsel [Dkt. 3055]
    - iv. Response by Box Hill Surgery Center re 3052 [Dkt. 3066]
    - v. Notice by the PSC of Cases Filed Directly in the District of Massachusetts [Dkt. 3065]
  - b. Specialty Surgery Center
    - i. Joint Motion to Modify Common Issue Discovery Deadlines in SSC Cases [Dkt. 3096]
    - ii. Motion for Extension of Time to 10/10/2016 to Complete Review of Materials from Hard Drives by Cumberland Medical Center [Dkt. 3097]
    - iii. Bellwether Selection Process

- A. Notice By Specialty Surgery Center Related Defendants of Proposed Bellwether Cases [Dkt. 3080]
- B. Notice by PSC of Proposed Bellwether Cases [Dkt. 3081]
- C. Specialty Surgery Center Defendants' Bellwether Strikes [Dkt. 3090]
- D. PSC's Bellwether Strikes [Dkt. 3091]

c. Box Hill Cases

- i. Notice by Consolidated Plaintiffs Joint Request for Extension of Time [Dkt. 3017]
- ii. Motion to Remand or Transfer of Box Hill Cases to Maryland and to Establish Venue in Maryland [Dkt. 3056] (no responses filed)
- iii. Notice by Consolidated Plaintiffs re Service of Common Issue Expert Reports [Dkt. 3093]

d. Status Of Cases Not Objecting to Remand

- i. Notice by PSC of [Proposed] Remand or Transfer [Dkt. 3028]
- ii. Notice by PSC of re [Dkt. 3028] Notice (Other) of Filing of [Corrected Proposed] Suggestion of Remand or Transfer [Dkt. 3052]
- iii. Response to Court Order by Premier Defendants [Dkt. 2934]
- iv. Fullerton Orthopedic Surgery Medical Group, Inc. Response to Order to Show Cause [Dkt. 3069]
- v. Response by MAPS [Dkt. 3070]

- e. Status of Cases Objecting to Remand
  - 1. PSC's Further Response to Order to Show Cause – Suggestions re Remand [Dkt. 3064]
    - i. *Simas* Plaintiffs' Response to Order to Show Cause [Dkt. 2931]
    - ii. Ocean State's Response to Order to Show Cause [Dkt. 2937]
    - iii. Plaintiff's Response to Order to Show Cause for Plaintiffs that originally filed in District of Massachusetts [Dkt. 2942]
    - iv. Defendant's Response to Order to Show Cause – Fullerton Orthopedic Surgery Center [Dkt. 2945]
    - v. Response to Order to Show Cause by Advanced Pain Defendants [Dkt. 2947]
    - vi. Misc. Plaintiffs' Response to Court Order [Dkt. No. 3067]
    - vii. Opposition re Remand or Transfer of Box Hill Cases to Maryland and to Establish Venue in Maryland via Section 157(B)(5) or Section 1404(A) [Dkt. 3071]
- 5. St. Thomas Cases
  - a. Status Report
  - b. Agreed Order Deadlines Relating to Confidential Settlement With Nashville Healthcare Defendants [Dkt. No. 3082]
  - c. Assented to Motion for Extension of Time to September 16, 2016 to Complete Settlement Agreement by St. Thomas [Dkt. 3085]
- 6. Report from *Pro Se* Liaison

**C. FULLY BRIEFED MOTIONS**

1. Discovery-Related Motions
  - a. Joint Motion to Modify Common Issue Discovery Deadlines in SSC Cases by the PSC [Dkt. No. 3096]
2. Other Motions
  - a. MOTION Request for Written Approval From The Court to Access And Rely on Information in the PSC Repository to Defend Himself Against Criminal Charges Arising Out of the Same Facts at Issue in this MDL by Barry J Cadden [Dkt. No. 3079]
    - i. RESPONSE to Motion re 3079 filed by United States of America [Dkt. No. 3082]
    - ii. Opposition re 3079 MOTION filed by Lead Counsel [Dkt. No. 3088]
    - iii. REPLY to Response to 3079 filed by Barry J Cadden [Dkt. No. 3092]
  - b. Motion to Remand or Transfer of Box Hill Cases to Maryland and to Establish Venue in Maryland [Dkt. 3056] (no responses filed)
  - c. Virginia Wrongful Death Settlement Motions
3. Petitions for Final Approval of Settlement Distributions in Two Virginia Wrongful Death cases
  - a. MOTION (Petition for Final Approval of Distributions relating to Case 1:14-cv-12978) by Robert Dana Bender [Dkt. 3094]
    - i. Notice re Dkt. 3094 by Robert Dana Bender of Hearing [Dkt. 3098]
    - ii. [PROPOSED] Final Order Approving Wrongful Death Distributions and Dismissing Case with Prejudice [Dkt. 3094-1]
    - iii. Motion for Order to Participate by Telephone by Insight Health Corp. [Dkt. No. 3102]

- b. Motion (Petition for Final Approval of Distributions Relating to Case 1:14-cv-12941-RWZ) by Patricia S. Brown, Jenae Patsell, John D. Spicer [Dkt. 3095]
  - i. Notice re Dkt. 3095 by Patricia S. Brown, Jean Patsell, John D. Spicer [Dkt. 3099]
  - ii. [Proposed] Final Order Approving Wrongful Death Distributions and Dismissing Case with Prejudice [Dkt. 3095-1]
  - iii. Motion for Order to Participate by Telephone by Insight Health Corp. [Dkt. No. 3104]
- 4. Dispositive Motions
  - a. None
- 5. Motions Regarding Tort Trust Payments
  - a. None
- 6. Orders re Tort Trust Payments
  - a. Order re Motions to Compel [Dkt. 3041]

**D. BRIEFING IN PROGRESS**

- 1. Discovery-Related Motions
  - a. Motion for Extension of Time to 10/10/2016 to Complete Review of Materials from Hard Drives by Cumberland Medical Center [Dkt. 3097]
    - i. Response (forthcoming)
- 2. PSC's Motion for Distribution of Common Benefit Fees and Expenses [Dkt. 3015]
  - a. Objections, if any, due October 24, 2016
  - b. PSC's Reply, if any, due November 21, 2016
- 3. Dispositive Motions
  - a. Motion to Dismiss for Failure to State a Claim by SSC [Dkt. No. 3086]
    - i. Memo in Support [Dkt. No. 3087]
    - ii. Joint Stipulation to Respond [Dkt. 3100] – PSC Response

Due October 7, 2016

**E. MOTIONS STAYED AS A RESULT OF DKT. 2898**

1. Saint Thomas Entities' Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkts. 2743, 2744, 2745]
  - a. PSC Opposition [Dkts. 2818, 2819, 2820]
  - b. Saint Thomas Entities' Reply [Dkt. 2854]
2. Tennessee Clinic Defendants' Motion to Compel David Kessler Deposition Completion and Mandate for Direct Responses [Dkts. 2763, 2766] (oral argument waived)<sup>1</sup>
  - a. Tennessee Clinic Defendants' Notice of Manual Filing of Exhibits 1-4 [Dkt. 2773]
  - b. PSC Opposition [Dkt. 2825]
  - c. Tennessee Clinic Defendants' Amended Reply [Dkt. 2838]
3. Nashville Healthcare Defendants' Motion to Strike Matthew Lee as Case-Specific Expert [Dkts. 2769, 2770]
  - a. Plaintiffs' Consolidated Opposition [Dkt. 2799]
4. PSC Motion to Quash and for Protective Order Relating to David Kessler [Dkts. 2815, 2816]
  - a. STOPNC Response [Dkt. 2837]
5. PSC Motion to Strike Supplemental Mixon Report [Dkts. 2829, 2830] (oral argument waived)
  - a. STOPNC Defendants' Opposition [Dkt. 2845]
  - b. PSC Reply [Dkt. 2863]
  - c. Order [Dkt. 2891]
  - d. Joint Status Report Regarding Motions to Strike Matthew Lee as Case-Specific Expert and Bill Mixon's Supplemental Report by Vaughan A. Allen, M.D., John Culclasure, Howell Allen Clinic, A Professional Corporation, Saint Thomas Outpatient Neurosurgical

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<sup>1</sup> See Transcript of April 14, 2016 Status Conference, 22:17-23:10.

Center, LLC, Debra Schamberg [Dkt. 2900]

6. STOPNC Defendants' Notice of Filing Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkt. 2874] (ostensibly applies to Bellwether cases)
7. PSC Motion for Leave to File Motion for Partial Summary Judgment on Comparative Fault Defenses Regarding Governmental Entities [Dkt. 2862]
  - a. STOPNC Defendants' Response [Dkt. 2868]
  - b. Saint Thomas Entities' Response [Dkt. 2873]
8. STOPNC Defendants' Motion for Leave to File Motions for Summary Judgment [Dkt. 2867]
  - a. Saint Thomas Entities' Notice of Joinder [Dkt. 2880]
9. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-121 [Dkts. 2869, 2870]
10. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkts. 2871, 2872]
11. Saint Thomas Entities' Motion for Leave to File Motion for Partial Summary Judgment on Claims for Apparent Agency [Dkt. 2878]
12. Saint Thomas Entities' Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2879]
  - a. Stipulation/Correction re Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2924]
13. PSC's Motion for Partial Summary Judgment [Dkt. 2887]
14. PSC's Motion for Extension of Time to June 10, 2016 to Complete Discovery Deadlines Set in Dkt. 2827 [2902]
15. Notice of Appeal of Magistrate Judge's Decision by Saint Thomas Entities [Dkt. 2908]
16. Motion for Joinder in the Saint Thomas Entities Objections to Order Denying Motion to Dissolve Protective Orders and Lift Stays and Request for Ruling on Omnibus Motion at Doc. 2908 [Dkt. 2911]

**F. FUTURE STATUS CONFERENCES**

1. November 3, 2016
2. December 8, 2016

Dated: September 27, 2016

Respectfully submitted,

**/s/ Kristen A. Johnson**

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*Plaintiffs' Lead Counsel on behalf of the  
Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 27, 2016

**/s/ Kristen A. Johnson**  
Kristen A. Johnson (BBO# 667261)